



DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Post Allowance and Reissue

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0033 Post Allowance and Reissue. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email:* InformationCollection@uspto.gov. Include "0651-0033 comment" in the subject line of the message.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Parikha Mehta, Senior Legal Advisor, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-3248; or by email at parikha.mehta@uspto.gov with “0651-0033 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information covers the submission of issue fee payments, requests for certificates of correction, and reissue applications to the United States Patent and Trademark Office (USPTO). The USPTO is required by 35 U.S.C. §§ 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18, 1.311, and 1.314.

This collection of information also covers several transactions that may be taken after issuance of a patent.

Pursuant to 35 U.S.C 254 and 255, a certificate of correction may be requested to correct an error or errors in an issued patent. If the USPTO determines that the request should be approved, the USPTO will issue a certificate of correction.

For an original patent that is believed to be wholly or partly inoperative or invalid, the original patentee, or the current patent owner if there has been a subsequent assignment, may apply for reissue of the patent. The reissue application process requires, among other items, provision of an oath or declaration specifically identifying at least one error being relied upon as the basis for reissue and stating the reason for the belief that the original patent is wholly or partly inoperative or invalid (e.g., a defective specification or drawing, or claiming more or less than the patentee had the right to claim in the patent). The rules outlining reissue application procedures are found at 37 CFR 1.171-1.173 and 1.175-1.178.

The title of this item has been changed from “Post Allowance and Refilling” to “Post Allowance and Reissue” to better reflect the nature of the items in this information collection.

II. Method of Collection

Electronically via the USPTO’s patent electronic filing system, by mail, or by hand delivery to the USPTO.

III. Data

OMB Control Number: 0651-0033.

Forms: (AIA= America Invents Act; SB = Specimen Book; PTOL = Patent Trademark Office Legal Form)

- PTO/AIA/05, PTO/AIA/06, PTO/SB/51, PTO/SB/52 (Reissue Application Declaration by the Inventor or the Assignee)
- PTO/AIA/07 (Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. § 115(d) and 37 CFR 1.64))
- PTO/AIA/50 (Reissue Patent Application Transmittal)
- PTO/AIA/53, PTO/SB/53 (Reissue Application: Consent of Assignee; Statement of Non-Assignment)

- PTO/SB/44 (Certificate of Correction)
- PTO/SB/51S, (Supplemental Declaration for Reissue Patent Application to Correct “Errors” Statement (pre-AIA 37 CFR 1.175(c)))
- PTO/SB/56 (Reissue Application Fee Transmittal Form)
- PTOL-85B (Issue Fee Transmittal)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent’s Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 426,301 respondents.

Estimated Number of Annual Responses: 426,301 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 30 minutes (0.5 hours) and 5.3 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 373,568 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$162,502,080.

Table 1: Total Burden Hours and Hourly Costs to Private Sector Respondents

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) x (b) = (c)	Estimated time per response (hour) (d)	Estimated burden (hour/year) (c) x (d) = (e)	Hourly Cost Burden Rate ¹ (f)	Total Annual Cost for Time Spent (e) x (f) = (g)
1	Certificate of Correction (PTO/SB/44)	58,200	1	58,200	1.3 (80 minutes)	75,660	\$435	\$32,912,100
2	Petition to Correct Assignee After Payment of Issue Fee (37 CFR 3.81(b))	534	1	534	0.8 (46 minutes)	427	\$435	\$185,745
3	Reissue Documentation	698	1	698	5.3 (318 minutes)	3,699	\$435	\$1,609,065

¹ 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is \$435 per hour.

4	Reissue Patent Application Transmittal (PTO/SB/50)	698	1	698	0.5 (30 minutes)	349	\$435	\$151,815
5	Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52, PTO/AIA/05/06) or Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64) (PTO/AIA/07)	1,175	1	1,175	0.8 (46 minutes)	940	\$435	\$408,900
6	Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175) (PTO/SB/51S)	30	1	30	0.6 (36 minutes)	18	\$435	\$7,830
7	Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53, PTO/AIA/53)	889	1	889	0.5 (30 minutes)	445	\$435	\$193,575
8	Reissue Application Fee Transmittal Form (PTO/SB/56)	698	1	698	0.5 (30 minutes)	349	\$435	\$151,815
9	Issue Fee Transmittal (PTOL-85B)	350,588	1	350,588	0.8 (46 minutes)	280,470	\$435	\$122,004,450
	Totals	413,510	---	413,510	---	362,357	---	\$157,625,295

Table 2: Total Burden Hours and Hourly Costs to Individual and Household Respondents

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) x (b) = (c)	Estimated time per response (hour) (d)	Estimated burden (hour/year) (c) x (d) = (e)	Hourly Cost Burden Rate ² (f)	Total Annual Cost for Time Spent (e) x (f) = (g)
1	Certificate of Correction (PTO/SB/44)	1,800	1	1,800	1.3 (80 minutes)	2,340	\$435	\$1,017,900

² Ibid.

2	Petition to Correct Assignee After Payment of Issue Fee (37 CFR 3.81(b))	16	1	16	0.8 (46 minutes)	13	\$435	\$5,655
3	Reissue Documentation	22	1	22	5.3 (320 minutes)	117	\$435	\$50,895
4	Reissue Patent Application Transmittal (PTO/SB/50)	22	1	22	0.5 (30 minutes)	11	\$435	\$4,785
5	Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52, PTO/AIA/05/06) or Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64) (PTO/AIA/07)	37	1	37	0.8 (46 minutes)	30	\$435	\$13,050
6	Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175) (PTO/SB/51S)	1	1	1	0.6	1	\$435	\$435
7	Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53, PTO/AIA/53)	28	1	28	0.5	14	\$435	\$6,090
8	Reissue Application Fee Transmittal Form (PTO/SB/56)	22	1	22	0.5	11	\$435	\$4,785
9	Issue Fee Transmittal (PTOL-85B)	10,843	1	10,843	0.8 (46 minutes)	8,674	\$435	\$3,773,190
	Totals	12,791	---	12,791	---	11,211	---	\$4,876,785

Estimated Total Annual Respondent Non-hourly Cost Burden: \$434,518,228.

There are no maintenance costs, capital start-up costs, or recordkeeping costs associated with this information collection. However, the USPTO estimates that the total annual (nonhour) cost burden for this information collection, in the form of filing fees (\$434,478,795) and postage (\$39,433), is \$434,518,228.

Filing Fees

The items with filing fees are listed in the table below.

Table 3: Filing Fees

Item No.	Type of Cost	Estimated Annual Responses	Amount	Totals
1	Certificate of correction (Undiscounted entity)	9,521	\$160	\$1,523,360
1	Certificate of correction (Small entity)	2,394	\$160	\$383,040
1	Certificate of correction (Micro entity)	90	\$160	\$14,400
3	Basic filing fee – Reissue (Undiscounted entity)	1,501	\$320	\$480,320
3	Basic filing fee – Reissue (Small entity)	528	\$160	\$84,480
3	Basic filing fee – Reissue (Micro entity)	65	\$80	\$5,200
3	Basic Filing Fee – Reissue (Design CPA) (Undiscounted entity)	25	\$320	\$8,000
3	Basic Filing Fee – Reissue (Design CPA) (Small entity)	5	\$160	\$800
3	Basic Filing Fee – Reissue (Design CPA) (Micro entity)	5	\$80	\$400
3	Reissue Search Fee or Reissue Design CPA Search Fees (Undiscounted entity)	1,544	\$700	\$1,080,800
3	Reissue Search Fee or Reissue Design CPA Search Fees (Small entity)	580	\$350	\$203,000
3	Reissue Search Fee or Reissue Design CPA Search Fees (Micro entity)	72	\$175	\$12,600
3	Reissue independent claims in excess of three (Undiscounted entity)	561	\$480	\$269,280
3	Reissue independent claims in excess of three (Small entity)	176	\$240	\$42,240
3	Reissue independent claims in excess of three (Micro entity)	21	\$120	\$2,520
3	Reissue claims in excess of 20 (Undiscounted entity)	4,531	\$100	\$453,100
3	Reissue claims in excess of 20 (Small entity)	1,495	\$50	\$74,750
3	Reissue claims in excess of 20 (Micro entity)	115	\$25	\$2,875
3, 4	Reissue Application Size Fee – for each additional 50 sheets that exceeds 100 sheets (Undiscounted entity)	46	\$420	\$19,320
3, 4	Reissue Application Size Fee – for each additional 50 sheets that exceeds 100 sheets (Small entity)	10	\$210	\$2,100
3, 4	Reissue Application Size Fee – for each additional 50 sheets that exceeds 100 sheets (Micro entity)	8	\$105	\$840
3	Reissue Examination Fee or Reissue Design CPA Examination Fee (Undiscounted entity)	1,542	\$2,320	\$3,577,440

3	Reissue Examination Fee or Reissue Design CPA Examination Fee (Small entity)	577	\$1,160	\$669,320
3	Reissue Examination Fee or Reissue Design CPA Examination Fee (Micro entity)	70	\$580	\$40,600
9	Utility issue fee (Undiscounted entity)	294,254	\$1,200	\$353,104,800
9	Utility issue fee (Small entity)	79,574	\$600	\$47,744,400
9	Utility issue fee (Micro entity)	9,678	\$300	\$2,903,400
9	Design issue fee (Undiscounted entity)	18,674	\$740	\$13,818,760
9	Design issue fee (Small entity)	14,600	\$370	\$5,402,000
9	Design issue fee (Micro entity)	6,228	\$185	\$1,152,180
9	Plant issue fee (Undiscounted entity)	641	\$840	\$538,440
9	Plant issue fee (Small entity)	598	\$420	\$251,160
9	Plant issue fee (Micro entity)	7	\$210	\$1,470
9	Reissue issue fee (Undiscounted entity)	448	\$1,200	\$537,600
9	Reissue issue fee (Small entity)	120	\$600	\$72,000
9	Reissue issue fee (Micro entity)	6	\$300	\$1,800
	Total Filing Fees	450,310	---	\$434,478,795

Postage

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). Customers may incur postage costs when submitting the information in this information collection to the USPTO by mail. The USPTO expects that approximately 1% (4,263) of the responses for this information collection will be submitted by mail. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$9.25 and that approximately 4,263 submissions will be mailed to the USPTO per year. Therefore, the USPTO estimates that postage costs in this collection will be \$39,433.

IV. Request for Comments

The USPTO is soliciting public comments to:

- (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected; and
- (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer,

Office of the Chief Administrative Officer,

United States Patent and Trademark Office.

[FR Doc. 2022-25362 Filed: 11/21/2022 8:45 am; Publication Date: 11/22/2022]